IN THE HIGH COURT OF DELHI

CRL.M.C.No.797/2005

Mohd. Irfan ..... Petitioner
! through: Mr. Shahid Ali, Advocate

VERSUS

$ Nisharia Begum ..... Respondent
^ through: Mr. J.K.Sharma, Advocate

% DATE OF DECISION: 07.08.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.** (Oral)

1. Petitioner is aggrieved by the order dated 15.2.2005 passed by the learned Additional Sessions Judge allowing Criminal Revision Petition No.75/2004 filed by the respondent and as a consequence setting aside the order dated 1.8.2004 passed by the learned Metropolitan Magistrate, New Delhi.

2. To appreciate the rival contentions of the parties, brief pen profile of the relevant facts needs to be noted which are to the effect that the respondent filed a petition under

Section 125 Cr.P.C. claiming maintenance against the petitioner inter alia alleging that the two contracted a marriage on 19.3.1996 (should actually read 19.3.1995). She stated that she was abandoned by the petitioner and had no means to sustain herself.

3. The petitioner opposed the said petition inter alia pointing out that the parties had divorced as per a talaknama duly signed by both parties. He stated that professing Islamic faith till husband did not give the requisite consent as required by Muslim Women's Protection of Rights on Divorce Act 1986, respondent could not lay a claim to any maintenance under Section 125 Cr.P.C.

4. Unfortunately for the respondent she did not file a rejoinder to the reply filed by the petitioner. The result was that vide order dated 2.11.1996 respondent's application under Section 125 Cr.P.C. was dismissed.

5. A fact may be noted. Though no evidence was led, learned Judge recorded that he had compared the signatures of the respondent on the talaknama with her admitted signatures on the court file as contained in her pleadings and was prima facie satisfied that the talaknama bore the signatures of the respondent.

6. Order dated 2.11.1996 has admittedly not been challenged till date. It has attained finality.

7. Thereafter, in the year 2001, petitioner filed another application under Section 125 Cr.P.C. and also prayed for interim maintenance.

8. Petitioner opposed the same by inter alia pointing out that in view of the order dated 2.11.1996, issue having attained finality, respondent could not seek any maintenance from him.

9. Dealing with the application for interim maintenance learned Metropolitan Magistrate, vide order dated 11.8.2004 held that in view of the order dated 2.11.1996 interim maintenance could not be granted to the respondent. Her application seeking interim maintenance was dismissed. As regards main petition, matter was listed for evidence.

10. Respondent challenged the order dated 11.8.2004. Learned Additional Sessions Judge held that till it was established that the matrimonial bond between the parties had snapped, application for interim maintenance was maintainable. Thus, allowing criminal revision petition No.75/2004 learned Additional Sessions Judge has directed

petitioner to pay a monthly maintenance of Rs.500/- to the respondent.

11. The legal issue which arises for consideration in the context of the facts afore-noted lies within a narrow compass.

12. Whether interim maintenance could be awarded? Is the question which needs answer.

13. While it may be true that order dated 2.11.1996 did not adjudicate the issue on merits as noted above, said order was the result of respondent not filing a replication to the reply filed by the petitioner to her application seeking interim maintenance and to that extent it cannot be said that the said order would operate as res judicata.

14. Reason being that sine qua non for a judicial adjudication to operate as res judicata is a decision on merits. But, at the same time, impact of the order dated 2.11.1996 cannot be nullified without a further inquiry.

15. The petitioner has a prima facie finding in his favour as noted in the same order.

16. Thus, at the second stage proceedings till evidence was led, question of awarding any maintenance to the respondent does not arise.

17. Indeed, the learned Metropolitan Magistrate, vide her order dated 11.8.2004 while declining interim maintenance has rightly held that matter has to be tried and for said reason notified a date for recording evidence.

18. Thus, impugned order dated 15.2.2005 cannot be sustained.

19. Petition stands disposed of quashing the impugned order dated 15.2.2005.

20. Noting that respondent's petition for maintenance under Section 125 Cr.P.C. is still pending and the fact that it was filed in the year 2001, I direct the learned Metropolitan Magistrate to expeditiously record evidence and dispose of the said petition in accordance with law.

21. Copy of this order be supplied dasti to learned counsel for the parties.

August 07, 2007 **PRADEEP NANDRAJOG, J.**
dk